PROCEEDINGS OF THE CHIEF CONTROLLING REVENUE AUTHORITY AND INSPECTOR GENERAL OF REGISTRATION

CHENNAI – 600 028.

Present: Dr.P.Sankar, I.A.S.,

D.Dis.No.9266/P1/2021 Dated 20.4.2021

Sub: Review Petition– pending document No.100/2020 –Sub Registrar Office, Sulur – Review Petition against the order passed by District Registrar, Coimbatore under section 56(1) of the Indian Stamp Act, 1899 – order issued – regarding.

Ref: 1. District Registrar, Coimbatore order No.10385/B1/2020 dated 4.2.2021
2.Revision petition from Marudhamalai Industrial & Logistics Parks LLP dated 2.3.2021

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ORDER:

A Revision Petition under section 56(1) of the Indian Stamp Act, 1899 has been filed before the Chief Controlling Revenue Authority against the order 1st cited passed by the District Registrar, Coimbatore in respect of document No.P100/2020 on the file of Sub Registrar office, Sulur wherein it has been order to pay deficit stamp duty of Rs.9,99,59,900/–. Revision petitioner represented by its Deputy Manager Mr.Selvam was heard on 16.4.2021.

2) Facts of the Case are as follows:–

Document No.	100/2020, Sub Registrar office, Sulur
Date of Execution	6.6.2020
Title	DEED OF MORTGAGE
Executants	MARUDHAMALAI INDUSTRIAL & LOGISTICS PARKS LLP
Claimant	IDBI TRUSTEESHIP SERVICES LTD
Amount secured	Rs.250,00,00,000/–

(PTO)

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Stamp Borne by the deed	Rs.40,100/-
Classification of document and Deficit stamp duty & penalty as determined by the District Registrar	Mortgage with Possession under Article 40(a) of the Indian Stamp Act, 1899 Rs.9,99,59,900/-

3) Based on certain recitals found in page 20 and 21 of the document to the effect that "Mortgagor irrevocably appoints the Lender and the security Trustee to execute all deeds and things which the mortgagor is authorised to execute and do", and also owing to the reason that a separate deed of POWER OF ATTORNEY executed by the Mortgagor appointing the Mortgagee as Power agent has been presented for registration (P101/2020), the Sub Registrar has decided that the document is classifiable as Mortgage with Possession under Article 40(a) of the Indian Stamp Act, 1889 and impounded the document as the same was not stamped in tune with Article 40(a) and sent the document to District Registrar for further action.

The District Registrar in his order dated 4.2.2021, citing certain recitals found in page 3 of the another document executed by the same party viz., Power of Attorney (P101/2020) to the effect that the power agent shall take possession of the property in the event of default has concluded that the instant document (P100/2020) as MORTGAGE WITH POSSESSION.

Aggrieved over the said decision present revision petition has been filed.

4) Main contentions of the Revision petition are as follows:

a) Mortgage deed does not envisage for delivery of possession.

b) As per various clauses of the Mortgage deed, Mortgagor continues to be in possession of the Mortgaged property.(Clause 5.6, provides that Mortgagor would permit the mortgagee only for the purpose of inspection of mortgaged property & clauses 6.1.17, 6.1.21,7.1)

c) Clause 13 relied upon by Sub Registrar to treat the mortgage as one with possession, does not delivers possession of the property.

d) Power of attorney deed presented for registration (P101/2021) empowers only to enforce the security interest.

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e) In Board of Revenue, Madras–Referring Authority Vs Moopanna Somarazu and another (1926) 51 MLJ 354 holds that the words 'agreed to be given' would not cover agreement to give possession on the breach of a certain covenant or on the happening of a future event which may or may not happen and would cover only cases where by the words of the document possession is directly agreed to be given.

f) In Mytrah Vayu (Krishna) Pvt. Ltd Vs CCRA and ors (MANU/MH/3560/2016), Hon'ble High Court of Bombay and in Motwani Builders and Ors Vs Registrar, Karnataka Appellate Tribunal and Ors (2019 (6) Kar LJ 371), Hon'ble High Court of Karnataka have held that undertaking to deliver possession of property in case of default does not amount to agreement to deliver possession.

g) In Syed Abdul Khader Vs Rani Reddi & others the Supreme Court of india and in Ananth Narayan Vs Tata Iron and Steel Company Ltd. AIR 1969 AP 211 and Krishna Vs Raja of Vijayanagaram 38 Mad 832 High Courts have held that Power of Attorney have to be construed strictly.

5) Contents of revision petition, connected records received from the District Registrar, the arguments advanced by the petitioner and written statement filed at the time of hearing have been carefully examined by me.

i) In an instance where the mortgagor had entered into an agreement to sell the property and also handed over the possession of the property under the aegis of sale agreement, registering officer classified the document under Article 40(a) of the Indian Stamp Act. However in IGR Pro.No.26242/P1/2013 dated 28.6.2013 the said mortgage deed was classified under Article 40(b) by holding that clubbing of two documents for determining the stamp duty is limited to Articles 32, 40(a), 40(c), 45(c), section 4, section 47B only.

ii) In IGR circular No.49698/P1/2013 dated 27.11.2013 relying on Referred Case 19 of 1925; B.P.176–R, Mis 26th May 1926 it has been clarified that Article 40(b) alone would apply if the recitals stipulate that possession will be

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taken over by the mortgagee in the event of breach of any covenants of the Mortgage deed and that Article 40(a) would apply only when the possession is handed over to the mortgagee in the first instance itself without waiting for breach of any covenant of the mortgage deed.

iii) In IGR Pro.No.28626/P1/2012 dated 18.4.2013, in respect of a deed executed for the purpose of securing the debentures which provided for taking over of the possession of the property for enforcing the security, relying on Referred Case 19 of 1925; B.P.176-R, Mis 26th May 1926, the said document was classified under Article 40(b) of the said Act.

iv) Apart from the recitals pointed out by the District Registrar, Clause 7.2 of the document is also noteworthy. Clause 7.2 of the document provides that on occurrence of event of default it shall be lawful for the security trustee to sell the property without intervention of the court. In a similar instance in CCRA proceedings No.24049/P1/2016 dated 2.6.2016, similar provision found in an INDENTURE OF MORTGAGE for securing loan was considered as to whether the same would amount to grant of POWER TO SELL FOR CONSIDERATION. Upon finding that Security Trustee is a secured creditor within the meaning of section 2(1) (zd) of SARFAESI Act, 2002 read with section 13 of the above said Act and that such power is exercisable only in the event of default, it was concluded by the CCRA that the document cannot be treated as POWER FOR CONSIDERATION. The present document has been executed in favour of a Trustee acting on behalf of the lender viz.., Bank of Baroda. As per section 2(1) (zd) (v) of SARFAESI Act, 2002, a secured creditor include a trustee also.

v) Further clauses 5.6, 6.1.17, 6.1.21 and 7.1 indicate retention of possession of property by the mortgagor until occurrence of a default by the mortgagor.

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In view of the legal position spelt out in the aforesaid orders, the document in question is classifiable under Article 40(b) of the Indian Stamp Act, 1899. Based on the above decision, the revision petition is hereby allowed and the order of the District Registrar is set aside.

(Sd)/– P.Sankar/20.4.2021
Chief Controlling Revenue Authority &
Inspector General of Registration.

/By Order/

For Inspector General of Registration.

20-4-21
20/04/21

To

1.M/s.Marudhamalai Industrial
& Logistics Parks Ltd.
No.1, 4th Floor, Park View,
No.85, G.N.Chetty Road, T.Nagar,
Chennai – 600 017. .

2. District Registrar,
Coimbatore.
(with original file)

Copy to: Stock file.

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